APPEAL NO. 170121
FILED MARCH 7, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on December 1, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to an aggravation of L4-5 herniated nucleus pulposus (HNP), an aggravation of L5-S1 HNP, lumbar radiculopathy, or lumbar radiculitis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 15, 2015; and (3) the claimant's impairment rating (IR) is five percent.

The claimant appealed, contending that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed as reformed.

The parties stipulated that the carrier has accepted a compensable injury to include a left knee strain, left ankle strain, and lumbar strain, and that (Dr. S), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for MMI, IR, extent of injury, disability, and return to work, certified that the claimant reached MMI on December 15, 2015, with a five percent IR for the accepted conditions. The claimant testified he was injured when he stepped into a drainage opening with his left leg.

EVIDENCE PRESENTED

The following exhibits were admitted at the CCH: Claimant's Exhibits 1 through 10, and Carrier's Exhibits A through H. However, the decision incorrectly states that Claimant's Exhibits 1 through 14 and Carrier's Exhibits A through K were admitted. We reform the hearing officer's decision to state that Claimant's Exhibits 1 through 10 and Carrier's Exhibits A through H were admitted, to reflect the correct exhibits admitted at the CCH.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to an aggravation of L4-5 HNP, an aggravation of L5-S1 HNP, lumbar radiculopathy, or lumbar radiculitis is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

In the Discussion the hearing officer stated that "the preponderance of the other medical evidence is not contrary to [Dr. S's] determinations on MMI and IR; therefore, his certification that [the] [c]laimant reached MMI on December 15, 2015, with a [five percent] IR is adopted." The evidence supports this statement.

However, the hearing officer made the following Findings of Fact:

5. [Dr. S's] certification that [the] [c]laimant reached MMI on December 15, 2015, with a [five percent] IR cannot be adopted because the certification of MMI and IR does not rate the entire compensable injury.

6. [The] [c]arrier's post-[designated doctor required medical examination], (Dr. D), certified [that the] [c]laimant reached MMI on December 15, 2015, with a [five percent] IR; the preponderance of the evidence supports his determinations (sic) on those issues.

As noted above, the parties stipulated that the MMI/IR certification from Dr. S, the designated doctor, is based on the accepted conditions, and we have affirmed the hearing officer's determination that the compensable injury does not extend to an

aggravation of L4-5 HNP, an aggravation of L5-S1 HNP, lumbar radiculopathy, or lumbar radiculitis. Dr. S's MMI/IR certification does consider and rate the accepted conditions of a left knee strain, left ankle strain, and lumbar strain. The hearing officer's Discussion makes clear that the hearing officer believed the preponderance of the other medical evidence is not contrary to Dr. S's MMI/IR certification and intended to adopt his MMI/IR certification, which is supported by the evidence. Accordingly, we reform the hearing officer's decision by striking Finding of Fact No. 5. We also reform Finding of Fact No. 6 to state the following:

> Dr. S's certification that the claimant reached MMI on December 15, 2015, with a five percent IR is not contrary to the preponderance of the other medical evidence.

We affirm the hearing officer's determinations that the claimant reached MMI on December 15, 2015, with a five percent IR.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to an aggravation of L4-5 HNP, an aggravation of L5-S1 HNP, lumbar radiculopathy, or lumbar radiculitis.

We affirm the hearing officer's determination that the claimant reached MMI on December 15, 2015.

We affirm the hearing officer's determination that the claimant's IR is five percent.

We reform the hearing officer's decision to state that Claimant's Exhibits 1 through 10 and Carrier's Exhibits A through H were admitted, to reflect the correct exhibits admitted at the CCH.

We reform the hearing officer's decision by striking Finding of Fact No. 5.

We reform Finding of Fact No. 6 to state the following:

> Dr. S's certification that the claimant reached MMI on December 15, 2015, with a five percent IR is supported by the preponderance of the evidence.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge